$~34&35

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CS(OS) 853/2011

GHANSHYAM AGGARWAL & ANR. ..... Plaintiffs

Through: Mr. Madan Lal Sharma, Adv.

versus

PARMANAND & ANR ..... Defendants

Through: Mr. Sumit Arora, Adv. for D-1.

AND

\+ CS(OS) 1036/2011

PARMANAND AGGARWAL AND ANR. ..... Plaintiffs

Through: Mr. Sumit Arora, Adv.

versus

GHANSHYAM AGGARWAL AND ORS ..... Defendants

Through: Mr. Madan Lal Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **01.02.2018**

1. CS(OS) No.853/2011 has been filed *inter alia* for partition of house no.54, UP Block, Maurya Enclave, Pitampura, Delhi – 110 034.

2. CS(OS) No.1036/2011 has been filed for recovery of possession of portion of the aforesaid property.

3. Both suits were heard extensively on 29th January, 2018 and in fact, order with respect to the hearing on that date also dictated in open Court. However, after the order had been dictated, elements of settlement appeared and so as to not prejudice the case of either party in the proposed settlement, it was agreed that the order would not be signed and released and the matter adjourned to today and the parties directed to appear in person.

4. Today, on first call at about 1040 hours in the morning, certain proposals for settlement were exchanged and to enable the parties to give

proper thought to the settlement which was emerging, the matter was passed over and has been taken up again at 1515 hours.

5. The counsel for the two plaintiffs in CS(OS) No.853/2011 namely Ghanshyam Aggarwal and Renuka Aggarwal and the counsel for the defendant no.1 namely Parmanand therein state that the disputes subject matter of suit and with respect to house no.54, UP Block, Maurya Enclave, Pitampura, Delhi stand settled on the following terms:-

(i) that the two plaintiffs and the defendant no.1 will within 15 days of today, apply for and take all steps for conversion of leasehold rights in the land underneath the house into freehold in the name of the two plaintiffs and defendant no.1;

(ii) that the charges and cost for freehold conversion shall be borne equally by the two plaintiffs on the one hand and the defendant no.1 on the other hand;

(iii) that the two plaintiffs and the defendant no.1, who alone are in occupation of the entire property, will within 15 days of today also apply for reconstruction/redevelopment of the property and again, bear the costs and charges for the same as aforesaid and within 15 days of sanction of plans, vacate the portions of the property in their respective possession and commence the work of demolition of the existing structure of the property and of redevelopment of the property comprising of stilt floor + four floors;

(iv) the cost of construction shall be borne equally by the parties in the aforesaid manner;

(v) that however, the plaintiffs shall within two months hereof, pay a sum of Rs.10,00,000/- to the defendant no.1;

(vi) that the plaintiffs shall within 15 days of conversion of leasehold rights in the land underneath the property into freehold, pay another sum of Rs.20,00,000/- to the defendant no.1;

(vii) that on completion of construction/redevelopment of the property, the two plaintiffs together shall be the exclusive owners of 2nd and 3rd floors with terrace above and the defendant no.1 shall be the exclusive owner of upper ground floor i.e. immediately above the stilt floor and the 1st floor;

(viii) that the stilt floor and the staircase shall be shared equally by the plaintiffs on the one hand and the defendant no.1 on the other hand;

(ix) that in the event of further construction above the 3rd floor being possible, the same shall again be equally shared by the plaintiffs on the one hand and the defendant no.1 on the other hand;

(x) that the cost of construction to be borne equally shall only be with respect to the masonry structure only and each of the two parties as aforesaid shall carry on the other works of interiors fittings, fixtures, wood work, etc. in their respective portions as per their own liking, taste and costs; and,

(xi) that the two plaintiffs together and the defendant no.1 shall have equal rights in the land underneath the house.

6. On enquiry, it is informed that the defendants no.2 to 4 in CS(OS) No.853/2011 namely Ramesh Chand Aggarwal, Avinash Aggarwal and Anita have no share or right in the property and have not even been appearing in this suit.

7. Since the aforesaid compromise arrived at between the parties is not executable, it is made clear that though the parties will be bound by the compromise aforesaid but if any further disputes arise between the parties with respect thereto, save as to payment of Rs.30,00,000/- as aforesaid by the plaintiffs to the defendant no.1, the parties shall be entitled to file a separate suit therefor. However, a decree is passed as aforesaid in favour of the defendant no.1 and against the plaintiffs for recovery of Rs.30,00,000/- by the defendant no.1 by the dates aforesaid. If the amounts are not paid by the dates aforesaid, the same shall incur interest at 12% per annum till the date of payment/realisation. It is made clear that it will not be open to the plaintiffs to deny such payment for the reason of any default by the defendant no.1 in performance of his part of the obligation thereunder save by filing a suit for enforcement of the aforesaid compromise and obtaining an order with respect to the said payment thereunder.

8. Binding the parties to the compromise aforesaid, the suit is disposed of.

9. In terms of compromise aforesaid in CS(OS) No.853/2011, the other suit i.e. CS(OS) No.1036/2011 is also disposed of.

10. Decree sheet as provided above be drawn up.

11. Both the plaintiffs and the defendant no.1 who are stated to be personally present are directed to sign this order sheet on each page and their respective counsels are also requested to identify their signatures.

Dasti.

RAJIV SAHAI ENDLAW, J

FEBRUARY 01, 2018
'pp'